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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SHAEL CRUZ, Individually, and On Behalf of All  
Others Similarly Situated,

Plaintiff,

-against-

INDESTRUCTIBLE SHOES LLC,

Defendant.

1:21-cv-9937-MKV

ORDER OF DISMISSAL

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff initiated this action by filing a complaint on November 24, 2021. [ECF No. 1].

An affidavit of service of summons and complaint was filed on the docket on February 16, 2022. [ECF No. 6]. According to that summons, Defendant's response to the complaint was due February 11, 2022. [ECF Nos. 6]. Months later, Defendant had not answered the complaint or otherwise appeared in this action, and Plaintiff had not moved for a default judgment.

Thus, in an Order dated April 12, 2022, the Court directed Plaintiff to file any motion for entry of a default judgment by May 12, 2022. [ECF No. 7]. The Court explained that failure to move for a default judgment by that deadline "may result in dismissal of this action for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure." [ECF No. 7]. To date, Plaintiff has not filed a motion for a default judgment or taken any other action to prosecute this case.

Accordingly, IT IS HEREBY ORDERED that the above-captioned action is discontinued for failure to prosecute without costs to any party and without prejudice to restoring the action to this Court's calendar if the application to restore the action is made by June 13, 2022. If no such application is made by that date, today's dismissal of the action is with prejudice. *See LeSane v.*

*Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)).

**SO ORDERED.**

**Date: May 13, 2022**  
**New York, NY**

Mary Kay Vyskocil  
**MARY KAY VYSKOCIL**  
**United States District Judge**